

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** August 15, 2011  
**POSITION:** Neutral  
**SPONSOR:** Board of Equalization

**BILL NUMBER:** AB 1307  
**AUTHOR:** N. Skinner

### **BILL SUMMARY:** State Board of Equalization: Seller's Permits

This bill would do the following:

1. Authorize the Board of Equalization (BOE) to deny a seller's permit to (1) a person that has an outstanding final liability with the BOE for any amount due and has not entered into an installment payment agreement, and (2) a business entity if any person "controlling" the entity, as defined in Business and Professions Code Section 22971, has an outstanding final liability with the BOE.
2. Authorize the Contractors' State License Board to revoke or suspend a license for failure to resolve outstanding final liabilities assessed by the BOE.
3. Require the BOE to operate and implement a Financial Institution Records Match system in cooperation with the Franchise Tax Board by requiring financial institutions to match their customer records against BOE's database of taxpayers with delinquent tax, fee, or surcharge liabilities.
4. Allow the BOE to use the new employee registry information maintained by the Employment Development Department for tax enforcement purposes.
5. Include jointing language to AB 1424. Note: AB 1424 as amended August 15, 2011, deleted the Section that both bills had been amending and also deleted the jointing language to this bill.

### **FISCAL SUMMARY**

According to the BOE, this bill would increase tax collections as follows:

1. Refusal of Seller's Permit—Minor increases due to taxpayers entering into installment agreements, with the potential to increase over time.
2. Denial or Suspension of a Contractor's License—Increases the BOE's ability to collect on \$51 million in outstanding tax liabilities owed by construction contractors.
3. Financial Institutions Record Match—Increases of \$12.3 million annually when fully implemented.
4. New Employee Registry Data—An increase of \$500,000 in collections of outstanding liabilities primarily in the Sales and Use Tax program.

The BOE states that it would incur some minor administrative costs related to the FIRM provision, but absorbable costs to administer the remaining provisions.

### **COMMENTS**

The Department of Finance is neutral on this bill. This bill should result in an incremental increase in tax compliance and improve BOE's collection efforts of past-due taxes, resulting in a positive effect on state and local sales tax revenues as well as the other taxes and fees administered by the BOE. It is currently estimated that the bill would result in at least \$12.8 million of revenue when fully implemented. It is sensible tax policy to deny a seller's permit in cases where a taxpayer has refused to address prior sales tax liabilities. And the remaining provisions in this bill are generally tax collection tools that have been used successfully by the FTB.

Analyst/Principal (0721) C. White	Date	Program Budget Manager Mark Hill	Date
--------------------------------------	------	-------------------------------------	------

Department Deputy Director	Date
----------------------------	------

Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

<b>BILL ANALYSIS</b>	Form DF-43 (Rev 03/95 Buff)
----------------------	-----------------------------

N. Skinner

August 15, 2011

AB 1307

**ANALYSIS****A. Programmatic Analysis*****(1) Refusing a Seller's Permit***

**Under current law,** every person wishing to engage in business as a seller within this state must obtain a seller's permit from the Board of Equalization (BOE).

**Under current law,** the BOE cannot fail to issue a seller's permit to a person even if they have an outstanding liability with the BOE and have failed to enter into an installment payment agreement, presuming the original permit has not yet been revoked.

**Under current law,** even if an original seller's permit was held by a sole proprietor and revoked for non-compliance, the BOE cannot refuse to issue a seller's permit if the sole proprietor creates a corporation and applies for a seller's permit under the name of the corporation.

**This bill would,** beginning January 1, 2012, authorize the BOE to deny a seller's permit to a person that has an outstanding final liability with the BOE for any amount due and has not entered into an installment payment agreement.

**This bill would,** beginning January 1, 2012, authorize the BOE to deny a seller's permit to a business entity if any person "controlling" the entity, as defined in Business and Professions Code Section 22971, has an outstanding final liability with the BOE.

**Discussion**

This bill is sponsored by the BOE. In a support letter dated July 1, 2011, the BOE states the following: "California's tax system is one based on voluntary compliance. Most taxpayers are honest and generally comply with the tax laws. However, the BOE's number of accounts with overdue accounts receivables, as well as the overall balance, continues to increase...Recent economic turmoil is one factor contributing to this increase. However, other reasons include the fact that some businesses purposefully fail to remit the tax, such as when a taxpayer diverts the sales tax reimbursement collected from a customer for his or her own purposes instead of remitting to the State. This bill would provide additional tools that would assist the BOE in reducing its growing outstanding accounts receivables balances from taxpayers' failure to remit the taxes that are owed.

In its analysis, the BOE notes that in the last three-year period, the BOE's accounts receivable balances for unpaid final (liabilities that are due and not under appeal) have nearly doubled to over \$1.5 billion.

This provision is intended to close two loopholes that are enabling some taxpayers to dodge their tax obligations. First, business owners that walk away from one location's businesses with an unpaid tax liability will not be able to immediately get a seller's permit for a different location without at least entering into an installment payment plan. Second, a taxpayer that has had a seller's permit revoked for non-compliance will be unable to restructure into another business entity and obtain a new seller's permit under that new entity without addressing their prior liability.

***(2) Denial or Suspension of a Contrator's License***

**Under current law,** the Contractors' State License Board is not authorized to deny or suspend a contractor's license for a licensee's failure to pay any BOE-related liabilities.

N. Skinner

August 15, 2011

AB 1307

**This bill would** authorize the Contractors' State License Board to revoke or suspend a license for failure to resolve outstanding final liabilities assessed by the BOE.

### **Discussion**

Under current law, the CSLB can deny or suspend a license for failure to pay outstanding liabilities to the CSLB, the FTB, the EDD, or the Department of Industrial Relations. However, current law does not allow the CSLB to deny or suspend a license for an outstanding liability due to BOE. This creates a situation where a licensee that owes income taxes can have their license suspended, while a licensee that owes sales taxes cannot have their contractor's license suspended. This inconsistency will be resolved with this provision.

### **(3) Financial Institutions Record Match**

**Under current law**, the FTB is required to coordinate with financial institutions doing business in this state to establish a financial institutions record match (FIRM) system using automated data exchanges.

**This bill would** require the BOE to operate and implement a FIRM system in cooperation with the Franchise Tax Board by requiring financial institutions to match their customer records against BOE's database of taxpayers with delinquent tax, fee, or surcharge liabilities.

### **Discussion**

Chapter 14, Statutes of 2011 (SB 86), the budget trailer bill signed into law in March 2011, included the provision that required FTB to establish a FIRM system. This was the Governor's proposal and was intended to give FTB more current information on all bank accounts that delinquent taxpayers may have. According to the BOE, if they were included in the FTB's FIRM processes, they would be able to more efficiently collect delinquent liabilities.

### **(4) New Employee Registry Data**

**Under current law**, all employers are required to report information on newly hired or rehired employees who work in this state to the Employment Development Department (EDD) within 20 days following the date the employee is hired.

**Under current law**, the new employee registry information may only be used for programs administered by EDD, FTB, public assistance programs, worker's compensation programs, and enforcement of child support obligations. The BOE is not authorized to use the new employee registry.

**This bill would** authorize the BOE to use information in the new employee registry for tax collection and enforcement purposes.

### **Discussion**

The FTB currently has access to the new employee registry data of EDD for tax collection purposes. BOE is also a tax collection agency and would benefit by access to this same data, resulting in increased revenues to the state.

### **(5) Jointing language**

**This bill** includes jointing language to AB 1424. Note: AB 1424 as amended August 15, 2011, deleted the Section that both bills had been amending and also deleted the jointing language to this bill. Therefore, the jointing language in this bill is unnecessary.

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)****Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

N. Skinner

August 15, 2011

AB 1307

**This bill** would become effective January 1, 2012.

**B. Fiscal Analysis**

According to the BOE, this bill would increase tax collections as follows:

- 1 Refusal of Seller's Permit—Minor increases due to taxpayers entering into installment agreements, with the potential to increase over time.
- 2 Denial or Suspension of a Contractor's License—Increases the BOE's ability to collect on \$51 million in outstanding tax liabilities owed by construction contractors.
- 3 Financial Institutions Record Match—Increases of \$12.3 million annually when fully implemented.
- 4 New Employee Registry Data—An increase of \$500,000 in collections of outstanding liabilities primarily in the Sales and Use Tax program.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2011-2012	FC	2012-2013	FC	2013-2014	Code
1100/Majr Tax Lic	RV	Yes	U	\$0 - 6,400	U	\$12,800	U	\$12,800	0001
0860/Equalization	SO	No	----- No/Minor Fiscal Impact -----						0001